

SECURITIES AND EXCHANGE COMMISSION

Release No. IA- 3866 / 803-00213

Gruss & Co. Inc.; Notice of Application

July 1, 2014

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of application for an exemptive order under section 202(a)(11)(H) of the Investment Advisers Act of 1940 (“Advisers Act”).

Applicant: Gruss & Co. Inc. (“Applicant”).

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(H) of the Advisers Act from section 202(a)(11) of the Advisers Act.

Summary of Application: Applicant requests that the Commission issue an order declaring it to be a person not within the intent of section 202(a)(11) of the Advisers Act, which defines the term “investment adviser.”

Filing Dates: The application was filed on March 23, 2012, and amended on March 4, 2014, and April 22, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 28, 2014 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission’s Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549. Applicant, Gruss & Co. Inc., c/o Martin E. Lybecker, Perkins Coie LLP, Suite 600, 700 Thirteenth Street, N.W., Washington, D.C. 20005.

For Further Information Contact: Vanessa M. Meeks, Senior Counsel, at (202) 551-6806 or Melissa R. Harke, Branch Chief, at (202) 551-6722 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 100 F Street, NE, Washington, D.C. 20549-0102 (telephone (202) 551-5850).

Applicant's Representations:

1. Applicant is a multi-generational single-family office that provides services to the family and descendants of Joseph S. Gruss. Applicant is wholly-owned by Family Clients and is exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities in compliance with rule 202(a)(11)(G)-1 ("Family Office Rule"). For purposes of the application, the term "Gruss Family" means the lineal descendants of Joseph S. Gruss, their spouses, and all of the persons and entities that qualify as Family Clients as defined in paragraph (d)(4) of the Family Office Rule. Capitalized terms have the same meaning as defined in the Family Office Rule.

2. Applicant provides both advisory and non-advisory services (collectively, the "Services"). Any Service provided by the Applicant that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an "Advisory Service."

3. Applicant represents that: (i) other than the exception discussed in representation 4 below, each of the persons served by the Applicant is a Family Client, *i.e.*, Applicant has no clients other than Family Clients as required by paragraph (b)(1) of the Family Office Rule, (ii) Applicant is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule, and (iii) Applicant does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule. At the time of the application, Applicant represents that Family Members account for approximately 79 percent of the natural persons to whom the Applicant provides Advisory Services.

4. Applicant provides Services to two sisters of a spouse of a lineal descendant of Joseph S. Gruss and each sister's respective spouse and children (collectively, the "Additional Family Clients").

5. The Additional Family Clients do not have an ownership interest in the Applicant. Applicant represents that the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Clients' Family Entities) make up at least 75 percent of the total assets for which the Applicant provides Advisory Services.

6. Applicant represents that each of the Additional Family Clients has important familial ties to and is an integral part of the Gruss Family. Applicant maintains that including the Additional Family Clients in the "family" simply recognizes and memorializes the familial ties and intra-familial relationships that already exist, and have existed for at least 14 years while the assets of the Additional Family Clients were managed by the Gruss Family.

Applicant's Legal Analysis:

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either

directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities”

2. Applicant falls within the definition of an investment adviser under section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Applicant would be eligible but for the provision of Services to the Additional Family Clients. Section 203(a) of the Advisers Act requires investment advisers to register with the Commission. Because the Applicant has regulatory assets under management of more than \$100 million, it is not prohibited from registering with the Commission under section 203A(a) of the Advisers Act. Therefore, absent relief, Applicant would be required to register under section 203(a) of the Advisers Act.

3. Applicant submits that its relationship with the Additional Family Clients does not change the nature of the office into that of a commercial advisory firm. In support of this argument, Applicant notes that if the sisters were sisters of a lineal descendent of Joseph S. Gruss, rather than the sisters of a spouse of a lineal descendent, there would be no question that each of the persons presently being served by the office would be a Family Member. Applicant states that in requesting the order, the office is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Indeed, although the Additional Family Clients do not fall within the definition of Family Member, they are considered to be, and treated as, members of the Gruss Family, and the number of natural persons who are not Family Members as a percentage of the total natural persons to whom the office would provide Advisory Services if relief were granted would be only approximately 21

percent. Applicant maintains that, from the perspective of the Gruss Family, Applicant seeks to continue providing Advisory Services exclusively to members of a single family.

4. Applicant also submits that there is no public interest in requiring the Applicant to be registered under the Advisers Act. Applicant states that the office is a private organization that was formed to be the “family office” for the Gruss Family, and that the office does not have any public clients. Applicant maintains that the office’s Advisory Services are tailored exclusively to the needs of the Gruss Family and the Additional Family Clients. Applicant argues that the presence of the Additional Family Clients, who have been receiving Advisory Services from the office for 14 years, does not create any public interest that would require the office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a “family office” that complies in all respects with the Family Office Rule.

5. Applicant argues that, although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission recognized in proposing the rule that the exact representations, conditions, or terms contained in every exemptive order could not be captured in a rule of general applicability. The Commission noted that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that did not meet the proposed family client definition, and that certain situations may raise unique conflicts and issues that are more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability. Applicant maintains that its unusual circumstances—providing Services to Family Clients and to the Additional Family Clients for

the past 14 years—have not changed the nature of the office’s operations into that of a commercial advisory business, and that an exemptive order is appropriate based on the Applicant’s specific facts and circumstances.

6. For the foregoing reasons, Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11) of the Advisers Act. Applicant submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

Applicant’s Conditions:

1. The Applicant will offer and provide Advisory Services only to Family Clients and to the Additional Family Clients, who will be deemed to be, and treated as if each were, a Family Client; provided, however, that the Additional Family Clients will be deemed to be, and treated as if they were, Family Members for purposes of paragraph (b)(1) and for purposes of paragraph (d)(4)(vi) of the Family Office Rule.

2. The Applicant will at all times be wholly-owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities (excluding the Additional Family Clients’ Family Entities) as defined in paragraph (d)(5) of the Family Office Rule.

3. At all times the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Clients’ Family Entities) will account for at least 75 percent of the assets for which Applicant provides Advisory Services.

4. Applicant will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson
Assistant Secretary